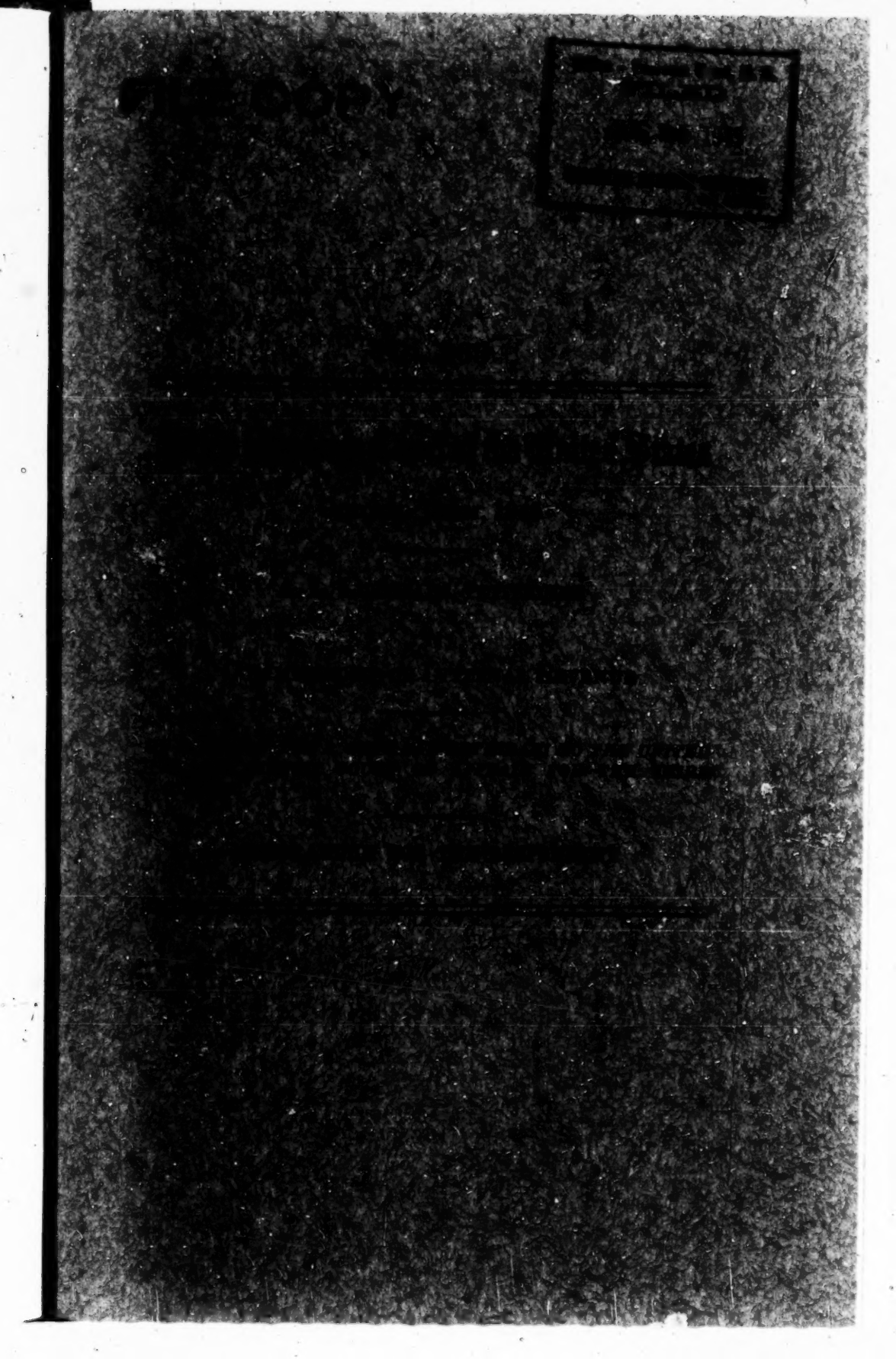

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 263

A. L. LUSTHAUS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

MEMORANDUM FOR THE RESPONDENT

We do not oppose the granting of a writ of certiorari in this case.

The question is whether an asserted partnership between the taxpayer and his wife shall be recognized for federal income tax purposes. The Tax Court held that the formalities by which the taxpayer gave money to his wife to enable her to buy an interest in his furniture business, made a deed of gift to her of a one-half interest in such business and executed a partnership agreement with her, made no change in the taxpayer's economic interests in the business and was merely a super-

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ficial arrangement for the obvious, if not the sole, purpose of reducing income taxes. It held, therefore, that the income of the business continued to be taxable to the husband. The Circuit Court of Appeals, treating the question as one essentially of fact, affirmed the Tax Court on the ground that there was substantial sustaining evidence in the record.

Under similar facts, however, the Circuit Court of Appeals for the Sixth Circuit, reversing a Tax Court decision, held that a partnership did exist for tax purposes. *Tower* v. *Commissioner,* 148 F. 2d 388.

The cases would seem to be in fundamental conflict in both rationale and result. The Government has filed a petition for certiorari in the *Tower* case on the basis, *inter alia,* of conflict with the instant case. This Court is respectfully referred to that petition for a comprehensive statement of the conflict and the importance of its resolution to the administration of the tax laws.

Respectfully submitted.

HAROLD JUDSON,
Acting Solicitor General.

AUGUST 1945.

U. S. GOVERNMENT PRINTING OFFICE: 1945